IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 2153 of 2007(F)

PETITIONERS:

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1. HAMZA, S/O.MOIDEENKUTTY,
   AGED 43 YEARS, MANTHEDATH HOUSE,
   P.O.CHERPLACHERRY, PALAKKAD DISTRICT.

2. MOIDEENKUTTY, S/O.KUNHAHAMMED,
   AGED 75 YEARS, MANTHEDATH HOUSE,
   P.O.CHERPLACHERY, PALAKKAD DISTRICT.

BY ADV. SRI.C.K.RAMAKRISHNAN

RESPONDENTS:

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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM.

2. M.SRAJU, GENERAL MANAGER,
   AUTHORISED OFFICER,
   THE CHERPLACHERRY CO-OPERATIVE URBAN BANK,
   P.O.CHERPLACHERRY, PALAKKAD DISTRICT.

*ADDL. R3. THE CHERPULASSERY CO-OPERATIVE URBANK BANK LTD., NO.1696, CHERPULASSERY P.O., PALAKKAD DISTRICT.

*(ADDL. R3 IMPLEADED AS PER ORDER IN I.A.3743/07 DATED 09.03.,07.)

BY ADV. SRI.S.SHYAM
SRI.V.K.BALACHANDRAN – R2 & ADDL. R3
GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)2153/07.

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE POSSESSION NOTICE AND SALE NOTICE.

EXT.P2: TRUE EXTRACT COPY OF SECTIONS OF SRAFAST ACT.

EXT.P3: TRUE COPY OF SALE NOTICE.

EXT.P4: TRUE COPY OF LEETER DATED 14.1.06.

EXT.P5: TRUE COPY OF REGISTERED NOTICE WITH ACK. DUE DATED 15.12.06.

EXT.P6: TRUE COPY OF THE PASS BOOK OF THE PETITIONER IN THE CHERPULASSERY CO-OP.URBAN BANK LTD DATED NIL/

EXT.P7(A): TRUE COPY OF THE AUCTION NOTICE DATED 09.02.2007.

EXT.P7(B): TRUE COPY OF THE AUCTION NOTICE DATED 09.02.07.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 2153 OF 2007

DATED THIS THE 9th DAY OF MARCH, 2007

JUDGMENT

The 1st petitioner availed a cash credit loan from the respondent Bank. He did not repay the amount within time. The bank initiated proceedings for sale of the mortgaged properties. The petitioners are challenging those proceedings in this writ petition on the ground that the sale proceedings is in violation of the provisions of the Civil Procedure Code. Therefore they seek quashing of those proceedings in this writ petition.

2. The learned counsel for the respondents 2 and 3 stoutly opposes the writ petition. According to them, more than Rs.23,00,000/- is due from the petitioners towards repayment of the cash credit loan. They would submit that they have invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act 2002 (Act for short)by complying with the procedure prescribed under the said Act. They would further submit that if the petitioners have any grievance against such notices, the petitioners have to approach the Debt Recovery Tribunal in appeal as provided under the Act.

3. I have considered the rival contentions in detail. Taking into account the facts and circumstances of the case, I am of opinion that some indulgence can be shown to the petitioners in the matter of payment of the balance amount due. In the writ petition the petitioners themselves admit that according to their calculation an amount of Rs.8,83,385/- is due. This of course, is disputed by the learned counsel for the respondents 2 and 3. According to him the amounts due would come to more than Rs.23,00,000/-.

4. In the above circumstances, the writ petition is disposed with the following directions.

The petitioners shall pay the admitted amount of Rs.8,83,385/- within three months from today. In the meanwhile the 2nd respondent shall consider Ext.P5 representation submitted by the petitioners in the correct and proper way and pass appropriate orders thereon giving details of calculation of the dues and intimate to the petitioner the balance amount due to be paid by him. On receipt of that intimation, the petitioners shall pay the balance amount in six equal monthly instalments starting from 9.7.07. Every subsequent instalments shall be paid on the 9th of every succeeding month. If the petitioners pay the above said amount without default in time , further proceedings now initiated by the respondents under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act shall be

kept in abeyance. However, if the petitioners fail to pay any of the said amounts as directed above, it would be open to the respondents to continue proceedings now initiated without having to issue any fresh notice or proceedings in that regard.

S. SIRI JAGAN, JUDGE

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